No. 79-1509

APR 14 1980

IN THE

Supreme Court of the United States

October Term 1979

COMMITTEE TO PROTECT THE FIRST AMENDMENT RIGHTS OF EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE,

Petitioner,

v.

BOB BERGLAND, INDIVIDUALLY AND AS SECRETARY OF AGRICULTURE,

Respondent.

BRIEF SUPPLEMENTING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Carl L. Shipley
Thomas C. Henry
SHIPLEY SMOAK & AKERMAN
1108 National Press Building
Washington, D.C. 20045

Attorneys for Petitioner

April, 1980

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES i

SUPPLEMENTAL BRIEF 1

TABLE OF AUTHORITIES

Page

Cases:

Branti v. Finkel,
U.S. (1980) (No. 78-1654,
decided March 31, 1980) 1, 3

Statutes and Regulations:

7 U.S.C. §1310 3

7 C.F.R. §1800.22 3

IN THE

Supreme Court of the United States

October Term 1979

No. 79-1509

COMMITTEE TO PROTECT THE FIRST AMENDMENT RIGHTS OF EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE,
Petitioner,

v.

BOB BERGLAND, INDIVIDUALLY AND AS SECRETARY OF AGRICULTURE,
Respondent.

BRIEF SUPPLEMENTING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

This supplemental brief is filed in order to apply the principles set forth by this Court in its recent decision in *Branti v. Finkel,* U.S. (1980) (No.78-1654, decided March 31, 1980), to the case now pending before the Court on a Petition for Writ of Certiorari.

In *Branti* the Court held that the issue in patronage cases is not whether the label "policymaker" or "confidential" fits the particular public office in question,

but rather the issue is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the office (slip op. pg. 11). Thus, the Court plainly announced its determination that political patronage constitutionally cannot serve as the basis for dismissing otherwise competent individuals even though such individuals may occupy "policymaking" or "confidential" positions.

In view of this determination, petitioner respectfully submits that even if petitioner's members did occupy policymaking or confidential positions, their dismissal constitutionally was impermissible under *Branti* because party affiliation is not an appropriate requirement for the effective performance of the duties as State Executive Directors of the Agricultural Stabilization and Conservation Service ("ASCS") or as State Directors of the Farmers Home Administration ("FmHA"). In short, membership in the Democratic party is not essential to the discharge of petitioner's members' governmental responsibilities.

While patronage appointments no doubt serve a valuable and important function in the higher echelons of government such as presidential appointees and their immediate aides, the Court has determined that such interests must yield to First Amendment rights when, as here, party membership is not essential to the discharge of the employees' duties.

Petitioner submits that its members are too far removed from the political hierarchy to justify constitutionally a patronage dismissal. State Executive Directors are appointed by the Adminstrator of ASCS and then only upon recommendation of the State Committee. State Directors of FmHA are appointed in a similar

manner.[1] The principal function of ASCS is to administer the acreage allotment and farm marketing quota program under the Agricultural Adjustment Act of 1928, as amended (7 USC §1310, *et seq.*), and the commodity price support and farmland conservation programs. The State Executive Director is responsible for planning organizing, directing and coordinating the state program and for managing operations of the state ASCS office.[2] The Farmers Home Administration is the agency within the Department of Agriculture responsible for loan and grant and other assistance programs for the benefit of rural areas. The FmHA State Director is responsible to the FmHA Administrator for FmHA programs, in accordance with established policies and delegations of authority (7 CFR §1800.22).[3]

Plainly, whatever policymaking, if any, that occurs at the State Director level does not relate to any partisan political interests. Accordingly, petitioner respectfully suggests that the Court may wish to consider remanding the case to the court of appeals in light of *Branti v. Finkel* so that court may apply the constitutional standards set forth therein.

Respectfully submitted,

Carl L. Shipley
Thomas C. Henry
SHIPLEY, SMOAK & AKERMAN
1108 National Press Building
Washington, D.C. 20045
(202) 783-1647
Attorneys for Petitioner

April, 1980

[1] Petition, App. 3a.
[2] *Id.*
[3] *Id.*